SUPREME COURT OF NEW JERSEY
C-454 SEPTEMBER TERM 1981

CIRO D'AMBROSIO,	:	19,155
Petitioner-Appellant,	:	ON PETITION FOR CERTIFICATION
v.	:	
BOARD OF EDUCATION OF THE WARREN HILLS REGIONAL SCHOOL DISTRICT, WARREN COUNTY.	:	FILED SUPREME COURT MARCH 24, 1982 STEPHEN TOWNSEND D2 CLERK
Defendant-Respondent.	:	

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-519-80T3 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 22nd day of March, 1982.

Clerk

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTED ON OPINIONS

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
A-519-80T3

CIRO D'AMBROSIO,

Petitioner-Appellant.

v.

BOARD OF EDUCATION OF THE
WARREN HILLS REGIONAL
SCHOOL DISTRICT, WARREN COUNTY,

Respondent-Respondent.

Argued: October 5, 1981 - Decided: October 22, 1981 Before Judges Bischoff and King.
On appeal from the State Board of Education.

Stephen E. Klausner argued the cause for appellant (Klausner & Hunter, attorneys; Jane Z. Lifset, on the brief).

David A. Wallace argued the cause for respondent (Aron, Till & Salsberg, attorneys).

James J. Zazzali, Attorney General of New Jersey, filed a statement in lieu of brief on behalf of the State Board of Education (M. Kathleen Duncan, Deputy Attorney General, of counsel and on the statement).

PER CURIAM

Petitioner-apellant, a non-tenured public school teacher, claims a wrongful refusal to renew his teaching contract for a third year because of his national origin, Italian. He further claims a retaliatory firing because he was successful in persauding the School Board to renege on its refusal to rehire him for the prior year, 1978-1979.

The Commissioner assigned the case to the Office of Adminstrative Law as a contested matter pursuant to N.J.S.A. 52:14F-1, et seq. Petitioner was ordered by the administrative law judge to file an amended petition containing a more definite contention. Thereafter the amended petition was dismissed by the judge because "[r]eading the amended petition in a light most favorable to petitioner, and giving petitioner the benefit of every reasonable doubt, the amended petition still contains

nothing but bare and generalized allegations unsupported by specific facts."

The Commissioner of Education, out of concern with the paucity of the record, remanded the case for a plenary hearing. The local board appealed to the State Board which unanimously reversed the Commissioner for "the reasons expressed in Administrative Law Judge's decision." Petitioner appeals from the State Board's decision; we affirm.

Petitioner, of Italian birth, possesses a teaching certificate from the State Department of Education. He has a master's degree in nuclear physics from Rutgers University. The record reveals no other information as to his background, age, employment history, etc. He was employed by the local board for 1977-1978 as a high school physics teacher. His contract was originally not renewed for these reasons.

Lack of an acceptable performance in the verbal presentation of the subject matter of physics in a manner and degree affording an adequate explanation for the students' comprehension.

Lack of an acceptable degree of performance in English enunciation in classroom presentation of subject materials.

For unspecified reasons the local board reneged on this nonrenewal and he was rehired for the 1979-1980 term to teach physical science at the junior high school level. He was notified in April 1979 of his nonrenewal because

The reasons your contract was not renewed for the 1979/80 are as follows:

(1) Lack of contemporary communication with students.

(2) Inability to establish yourself as the authority figure in class.

(3) Student control is not always satisfactory.

(4) Students are confused as to the expectations of teacher. This confusion existed in both academic and behavior matters.

The record contains seven written classroom evaluations, six average and one below average, for the 1978-1979 term. Two mention petitioner's problem with the English language, several suggest problems in his organizaiton and control of his class.

Petitioner had no right to have his contract renewed. In Re Board of Ed. of City of Englewood, 150 N.J. Super. 265 (App. Div. 1977), certif. den. 75 N.J. 525 (1977). The local Board must, if asked, give nonrenewed nontenured teachers a statement of reasons why a new contract was not offered. Donaldson v. Bd. of Ed. of N. Wildwood, 65 N.J. 236 (1974). Nonretention may not be based on constitutionally impermissible grounds, such as invidious discrimination or the exercise of First Amendment rights. Id. at 242-243. But we have stated "that the bare assertion or generalozed allegations

of a constitutional right does not create a claim of constitutional dimensions." Winston v. Bd. of Ed. of So. Plainfield, 125 N.J. Super. 131, 144 (App. Div. 1973), aff'd 64 N.J. 582 (1974). In the present case the local board specifically stated the grounds for nonrenewal. The 1979-1979 evaluations document petitioner's performance as mediocre to average. He was given a second chance when the local board rehired him for term and apparently didn't improve to their satisfaction.

On his administrative appeal, even after amending his affirmative pleading, petitioner came forward with only a bare allegation of discrimination because of national origin and a bare claim of retaliatory nonrenewal. On this record the administrative law judge could properly find that petitioner had not "presented a bona fide claim of constitutional stature" and that he was

not "entitled to a full evidentiary hearing." Winston, supra, 125 N.J. Super. at 145. Since the judge's finding was legally sound, we cannot say that the State Board's ruling "that petitioner had failed to sustain the allegations that his nonrenewal was solely for reasons of his ethnic background" was arbitrary, capricious, unreasonable or contrary to law. As the State Board correctly stated, "it is no appropriate for the Commissioner in a nonrenewal case to substitute [his] judgment for that of the local board."

We also are satisfied that petitioner was adequately afforded the right to a full presentation before the State Board. Clearly, the State Board had the opportunity to review the legal and factual record made before the administrative law judge and before the Commissioner. In the context petitioner's

right under N.J.S.A. 52:14B-10(c) to be heard was satisfied.

We reject petitioner's argument that the local board had no right to appeal the Commissioner's interlocutory order remanding the matter for a full hearing. The applicable statute clearly states that "any party aggrieved by any determination of the commissioner" may appeal to the State Board. N.J.S.A. 18A:6-27. (Emphasis supplied.)

We also find petitioner's final argument without merit. He contends that the failure of the State Board to act within 45 days requires adoption of the Commissioner's ruling. Even if the State Board is considered "the head of the agency" within N.J.S.A. 52:14B-10(c), the lack of timely action results in an adoption of the decision of the administrative law judge as the "final decision," not the Commissioner's

decision. Since the judge's decision was adverse to the petitioner any alleged admnstrative irregularity was harmless.

Affirmed.

Appendix C

CIRO D'AMBROSIO, :

PETITIONER-APPELLEE, STATE BOARD OF EDUCATION

V.

BOARD OF EDUCATION OF THE WARREN HILLS : DECISION
REGIONAL SCHOOL
DISTRICT, WARREN :
COUNTY,

RESPONDENT-APPELLANT:

Decided by the Commissioner of Education, March 24, 1980.

For the Petitioner-Appellee, Stephen E. Klausner, Esq.

For the Respondent-Appellant, Dorf, Wallace & Glickman (David A. Wallace, Esq., of Counsel)

The State Board of Education reverses the Commissioner's decision for the reasons expressed in the Adminstrative Law Judges decision.

October 1, 1980

Date of Mailing 10/3/80

OAL DKT. NO. EDU 3061-79

CIRO D'AMBROSIO, :
PETITIONER :
: COMMISSIONER OF
: EDUCATION
V. :

BOARD OF EDUCATION
OF THE WARREN HILLS : DECISION
REGIONAL SCHOOL :
DISTRICT WARREN
COUNTY, :

RESPONDENT.

:

The Commissioner has reviewed the record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner notes that exceptions were filed by petitioner pursuant to the provisions of N.J.A.C. 6:24-1.17(b).

The Commissioner observes that two of the resons expressed to petitioner by the Board when it informed him it intended not

to renew his contract as a teacher for the school year 1978-79 were:

> "A. Lack of an acceptable performance in the verbal presentation of the subject matter of physics in a manner and degree affording an adequate explanation for the students' comprehension.
>
> "B. Lack of an acceptable degree of performance in English enunciation in classroom presentation of subject materials."

The Commissioner notes that the Board reversed itself after a special meeting and offered petitioner reemployment for the 1978-79 school year. The record is devoid of the reason(s) for the Board's reversal nor does the record show that such a decision was motivated by improvement in petitioner's verbal presentation and English enunciation. The Commissioner notes that references was made during the school year 1978-79 to petitioner's problem of language.

The Commissioner observes that the record before him, while referring to deficiencies in English enunciation and usage, gives no examples or verification of such allegations. Nor is there in the record evidence of any standards of usage applied nor is there expressed therein the opinions of any language experts. The decision is based solely on the written record and a Motion to Dismiss.

Petitioner contends that the Board erred in its determination that he was not competent in language usage. He alleges that he has mastery of the language and that the nonrenewal was a subterfuge.

The Commissioner is concerned with the paucity of the record in this matter and accordingly remands this decision to the Office of Adminstrative Law for a full hearing. The Commissioner directs that, in the circumstances of this case, in addition to the regular court stenographer

the court use a tape recorder with a good sound resolution and with high tonal quality to compile a good acoustical record of petitioner's speech.

It is so directed.

COMMISSIONER OF EDUCATION

March 24, 1980 Date of Mailing 3/26/80

IN RE: CIRO D'AMBROSIO	)	INITIAL DECISION
	)	O.A.L. DKT. NO. E.D.U. 3061-79
V.	)	AGENCY DKT. NO. 287-7/79A
BOARD OF EDUCATION WARREN HILLS REGIONAL, HUNTERDON COUNTY, NEW JERSEY	)	

APPEARANCES:

Stephen E. Klausner, Esq., for Petitioner

David A. Wallace, Esq., for Respondent

BEFORE THE HONORABLE ROBERT P. GLICKMAN, A.L.J.:

This matter comes before the Court on respondent's motion to dismiss petitioner's amended petition pursuant to N.J.A.C. 6:24-1.10 on the grounds that no sufficient cause for determination has been advanced. Respondent has submitted a letter memorandum dated January 11, 1980 in support of its motion and also relies on its brief in support of its motion directed at the original petition.

Petitioner relies on a letter memorandum dated January 24, 1098 in opposing respondent's motion to dismiss.

The following procedural history of this matter is relevant:

1. The original petition of appeal was filed with the commissioner of Education on or about July 17, 1979.

2. An answer was filed on behalf of respondent on or about August 2, 1979.

3. This matter was then transmitted to the Office of Adminsitrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

4. A prehearing conference was held at the Office of Administrative Law, 185 Washington Street, Newark, New Jersey on October 23, 1979.

5. On or about November 1, 1979 respondent filed a notice of motion to, among other things, dismiss the petition on the grounds that no sufficient cause for determination has been advanced.

6. On or about November 16, 1979 petitioner filed a letter memorandum in opposition to respondent's motion.

7. On or about November 19, 1979 this Court ordered that petitioner file an amended petition containing a more definite statement.

8. On or about November 29, 1979 petitioner filed an amended petition of appeal.

9. On or about January 11, 1980 respondent filed a letter memorandum in lieu of formal notice of motion and brief moving to dismiss petitioner's amended petition pursuant to N.J.A.C. 6:24-1.10 on the grounds that no sufficient cause for determination has been advanced.

10. On January 24, 1980 petitioner submitted a letter memorandum in opposition to respondent's motion to dismiss the amended petition.

In determining whether or not the amended petition should be dismissed on the grounds that there is no sufficient cause for determination, this Court has carefully read and reread the amended petition which it shall summarize as follows:

1. The first paragraph indicates that the petitioner is a non-

tenured teacher employed by respondent;

2. The second paragraph indicates that the respondent is responsible for the operation of and supervision of Warren Hills Regional Schools;

3. The third paragraph indicates that by letter dated April 6, 1978 respondent informed petitioner that it would not renew his contract as a teacher for the second year 1978/79 for the reasons that:

   A. "Lack of an acceptable performance in the verbal presentation of the subject matter of physics in a manner and degree affording an adequate explanation for the students' comprehension."

   B. "Lack of an acceptable degree of performance in English enunciation in classroom presentation of subject materials."

4. Paragraph four indicates that on May 9, 1978, after a special meeting, the respondent reversed itself and offered petitioner re-employment for the 1978/79 school year.

5. Paragraph five indicates that petitioner was reassigned on or about May 18, 1978 to its junior high school where he would teach

general science during 1978/79. It was also pointed out that petitioner held a Master's Degree from Rutgers University in nuclear physics.

6. Paragraph six indicates on or about May 18, 1978 petitioner's chairperson, Harold Musselman, informed petitioner that the transfer was the first step toward his non-renewal for the school year 1979/80.

7. Paragraph seven indicates that petitioner's evaluations contain criticism of his ability to speak and use the English language.

8. Paragraph eight indicates that on or about September 21, 1978 petitioner's new chairperson evaluated him with the comment that, "taking lessons to improve his English."

9. Paragraph nine indicates that in an October 5, 1978 evaluation, it was pointed out that petitioner had a problem of language and that it was difficult to understand some of his statements.

10. Paragraph ten indicates that respondent informed petitioner on or about March 16, 1978 that it would not renew his contract for the 1979/80 school year for the following reasons:

A. "Lack of contemporary communication with students."

B. "Inability to establish himself as the authority figure in class."

C. "Student control is not always satisfactory."

D. "Students are confused as to the expectations of teacher. This confusion existed in both academic and behaviour matters."

11. Paragraph eleven indicates that the reasons proferred by respondent were knowingly and intentionally false, discriminatory and violated petitioner's constitutional and statuatory rights not to be discriminated against because of his national origin, Italian.

12. Paragraph twelve indicates that respondent's actions were in retaliation for petitioner's successfully petitioning respondent to renew him for school year 1978/79.

Petitioner then sought the following relief in this amended petition:

A. Directing respondent to reinstate petitioner to a teaching position for the school year 1979/80.

B. Directing respondent to cease and desist from illegally discriminating against petitioner because of his national origin.

C. Such other and further relief as the Commissioner deems just and proper.

The thrust of petitioner's petition is that the Board discriminated against him because of his national origin. It is only in paragraph eleven of the petition, for the first time, that one learns that petitioner's national origin is Italian. None of the factual allegations set forth before paragraph eleven, directly or indirectly, indicate that the actions of the Board against petitioner are based on his Italian origin. Additionally, no inference can be drawn from any of the factual allegations which would indicate that the Board discriminated against petitioner because of his Italian origin. This Court is unable to infer from the fact that the Board gave petitioner a

negative evaluation based upon his inability to speak and use the English laguage that it was disciminating against him based upon his Italian origin. A teacher's deficiency in speaking and using the English language would certainly seem to be a ground for non-remewal of his contract irrespective of his national origin. Similarly, it would be illogical to conclude that either a Chinese, Russian, Hungarian, Israeli or Egyptian teacher, by way of example, who was deficient in English speaking or usage, and who was not re-employed, was being descriminated against because of his national origin. It follows, therefore that the general allegation contained in paragraph eleven is totally insufficient.

Petitioner was afforded an opportunity to amend his petition to cure the vague and general allegations contained therein. Petitioner's amended

petition does not accomplish this. Respondent is entitled to defend against specific acts, not vague generalities.

In Winston v. Board of Ed. of So. Plainfield, 125 N.J. Super. 131 (App. Div. 1973), aff'd 64 N.J. 582 (1974) the Court discussed whether a petition which contained nothing more than naked allegations was subject to dismissal on its face. In Winstson, supra, the Appellate Division clearly stated that:

> "It may be acknowledged that the bare assertion or generalized allegation of infringement of a constitutional right does not create a claim of consititutional dimensions."

125 N.J. Super at 144. Additionally, the Commissioner has held that where a petition lacks the required supportive detailed factual allegations, the petition should be dismissed. John C. Roy, II v. Board of Education of the Township of

Middle, Cape May County, 1976 S.L.D. 569, 572 aff'd State Board of Education, 1976 S.L.D. 574; Dee Foster and The Neptune Education Association v. Board of Education of the Township of Neptune, Monmouth County, 1976 S.L.D. 693. In addition, as stated in Alice W. Cardman, et al v. Board of Education of the Township of Millburn, Essex County, 1977 S.L.D. 746, 749-50:

> "...in the absence of specific allegations with respect to petitioner's conclusion that the Board's action of not reemploying her was based on constitutionally proscibed reason, an adversary hearing is not warranted."

Also, the Commissioner in the case of Barbara Hicks, v. Board of Education of the Township of Pemberton, Burlington County, 1975 S.L.D. 332, 336 stated:

> "When a teaching staff member alleges that a local Board of Education has refused re-employment for proscribed reasons (i.e. race, color, religion, etc.) or in violation of

constitutional rights such as free speech, or that the Board was arbitrary and capricious or abused its discretion, and is able to provide adequately detailed specific instances of such allegations, then the teaching staff member may file a petition of appeal before the Commissioner which will result in a full adversary proceeding..." (Emphasis added).

Applying the well-established principals of law just enunciated to the facts in the instant case, it is clear that the amended petition must be dismissd. Reading the amended petition in a light most favorable to petitioner, and giving petitioner the benefit of every reasonable inference, the amended petition still contains nothing but bare and generalized allegations unsupported by specific facts.

Accordingly, it is **CONCLUDED** that respondent's motion to dismiss petitioner's amended petition on the grounds that no sufficient cause for

determination has been advanced be and is hereby granted.

It is, therefore, **ORDERED** that petitioner's amended petition be and is hereby **DISMISSED** without prejudice.

This recommended decision may be affirmed, modified or rejected by the Commissioner of Education, who by law is empowered to make a final decision in this matter. However, if the Commissioner does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1 et seq.

I HEREBY FILE with the **COMMISSIONER OF EDUCATION, FRED G. BURKE**, my Initial Decision in this matter and the record in these proceedings.

February 6, 1980
DATE

ROBERT P. GLICKMAN,
A.L.J.

Receipt Acknowledged:

February 8, 1980
DATE

AGENCY HEAD

Mailed to Parties:

February 11, 1980
DATE

OFFICE OF ADMIN. LAW
Appendix F

Office of Administrative Law
Filed - Trenton, N.J.
November 29, 1:45 PM 179

STEPHEN E. KLAUSNER
61 Grove Street, PO Box 1012
Somerville, NJ 08876
(201) 685-1552
Attorney for Petitioner

Petitioner,CIRO D'AMBROSIO
OF EDUCATION

against

Respondent, BOARD OF EDUCATION WARREN HILLS REGIONAL, HUNTERDON COUNTY, NEW JERSEY

BEFORE THE COMMISSIONER

OF NEW JERSEY

AMENDED PETITION OF APPEAL

DOCKET NO. EDU. 3061-79

Petitioner, Ciro D'Ambrosio, residing at 112 Merriam Avenue, Newton, New Jersey, hereby requests the Commissioner to hear

and determine the within controversy under School Law (N.J.S.A. 18A: 6-9) by reason of the following facts:

1. Petitioner, Ciro D'Ambrosio, is a non-tenured teacher employed by Respondent.

2. Respondent, Board of Education of Warren Hills Regional, Warren County, New Jersey is responsible for the operation of and supervision of Warren Hills Regional Schools.

3. By letter dated April 6, 1978, Respondent informed Petitioner that it would not renew his contract as a teacher for school year 1978/1979. The reasons proffered for non-renewal were:

> Lack of an acceptable performance in the verbal presentation of the subject matter of physics in a manner and degree affording an adequate explanation for the students' comprehension.
>
> Lack of an acceptable degree of performance in English enunciation in classroom presentation of subject materials.

4. On or about May 9, 1978, after a special meeting, Respondent reversed itself and offered Petioner re-employment for the 1978-1979 school year.

5. Despite the fact that petitioner has a Master's Degree from Rutgers University in Nuclear Psychics, on or about May 18, 1978 respondent re-assigned petitioner to its Junior High School and informed him that for school 1978-1979 he would be teaching General Science.

6. On or about May 18, 1978 petitioner's then Chairperson, Harold Musselman informed Petitioner that the transfer was the first step toward his non-renewal for school year 79-80 and warned him to be on guard.

7. Almost from the outset, despite the fact that petitioner had a new chairperson who had not been privy to the incidents of the previous Spring, petitioner's evaluations contained

criticism of his ability to speak and use the English language.

8. On or about September 21, 1978 petitioner's new Chairperson evaluated him with a comment that "taking lessons to improve his English".

9. On or about October 5, 1978 set of evaluators stated that in an evaluation of said date that "D'Ambrosio's only significant problem as I see it is one of language. Although he speaks carefully and slowly, it was difficult to understand some of his statements. This language problem did force the students to be more attentive and in this class, may actually help in terms of behavior."

10. On or about March 16, 1979, Respondent informed Petitioner that it would not renew his contract as a teacher for school year 1979/1980. The reasons proffered for non-renewal were:

1. Lack of contemporary communication with students.
2. Inability to establish himself as the authority figure in class.
3. Student control is not always satisfactory.
4. Students are confused as to the expectations of teacher. This confusion existed in both academic and behavior matters.

11. The reasons proffered by respondent are knowingly and intentionally false, discriminatory and violated petitioner's constitutional statutory rights not to be discriminated against because of his national origin, Italian.

12. Further respondent's action was in retaliation for his successfully petitioning respondent to renew him for school year 1978-79.

WHEREFORE, Petitioner prays for an Order:

a. Directing Respondent to reinstate Petitioner to a teaching postition for school year 1979/1980;

b. Directing Respondent to cease and desist from illegally discriminating against Petitioner because of his national origin.

c. Such other and further relief as to the Commissioner seems just and proper.

RESPECTFULLY SUBMITTED,

STEPHEN E. KLAUSNER

DATED: November 23, 1979